



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/171057

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 30, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Public Assistance Collection Unit in regard to Medical Assistance, a hearing was held on February 15, 2016, at Ashland, Wisconsin.

The issue for determination is whether the petitioner must repay an alleged overpayment of medical assistance.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

I

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]  
Public Assistance Collection Unit  
PO Box 8938  
Madison, WI 53708-8938

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Ashland County.
2. The Department notified the petitioner on December 14, 2015 that it would seek to recover \$6,181.99 in BadgerCare Plus benefits paid on his behalf from May 1, 2014, through April 30, 2015, because he allegedly failed to report household income.

3. The petitioner married [REDACTED] in 1976 and divorced her in 2007. *Bad River Tribal Court Judgment*, February 9, 2007, Case No [REDACTED] (*Exhibit 3*). They have not remarried.
4. The petitioner and [REDACTED] have been living together and sharing household expenses and chores since 2010.
5. The petitioner filed his 2014 federal income tax return as a single person. *Exhibit 3*. He has not filed his 2015 return. He is not listed as a dependent on his former wife's return and she is not listed on his.
6. The federal poverty level for a single person was \$980.83 per month in 2015. *BadgerCare Plus Handbook*, § 50.1.
7. The petitioner's income exceeded the federal poverty level from December 2014 through March 2015.
8. The Department has not provided any documentation or other evidence concerning capitation fees and medical bills the BadgerCare Plus program paid on the petitioner's behalf from May 1, 2014, through April 30, 2015.

### DISCUSSION

The Department seeks to recover \$6,181.99 in BadgerCare Plus benefits paid on the petitioner's behalf from May 1, 2014, through April 30, 2015. BadgerCare Plus is Wisconsin's medical assistance program for those who are not elderly or disabled. Adults are ineligible if their household income exceeds the federal poverty level. Wis. Stat. § 49.471(4)(a). The department may recover any overpayment of BadgerCare Plus that occurs because of a "misstatement or omission of fact by a person supplying information in an application..." Wis. Stat. § 49.497(1).

Whether the agency prevails in its entire claim depends upon whether the petitioner's former wife, [REDACTED], is part of his household. He married her in 1976 and—unknown to the department—divorced her in 2007. But they have lived together since 2010. During this period, she has provided most of his financial support, and he has taken care of the household tasks. Her annual income exceeds \$70,000 a year, or more than four times the income limit for a two-person household. *See BadgerCare Plus Handbook*, § 50.1

Those such as the petitioner who apply for BadgerCare Plus after April 1, 2014, are covered by the Modified Adjusted Gross Income (MAGI) rules. *BadgerCare Plus*, § 2.3.2. These "rules are based on the concept of an individual's tax household, not necessarily on the physical household or family relationships." *Id.* According to BadgerCare Plus policy, "If the individual is a tax filer and is NOT being claimed as a dependent by anyone else, then the individual's MAGI group consists of the tax filer, the tax filer's spouse, and any dependents the tax filer is claiming." *Id.*, § 2.3.2.1. [capitalization in original] When determining eligibility, the agency must count the income of each person in the assistance group. *Id.*, § 2.8.2.

The Department contends that the petitioner informed a recent employer that he files his taxes as a married person. It bases its claim on a form filled out by that employer, the [REDACTED], that states this. But this statement appears to be wrong because the petitioner filed his 2014 federal income tax return, his most recent return, as a single person. It is possible that he misrepresented his tax status to the tribe, but there is no way to confirm this. He did not fill out the document the department relied upon, the person who did fill it out did not testify, and the Department did not obtain the underlying tax document that the petitioner submitted to the tribe. The preponderance of the credible evidence is that the petitioner filed his tax return as a single person and that he is not claimed as anyone else's dependent. This means that his assistance groups consists only of him and thus only his income should be counted when determining his eligibility. Therefore, the Department cannot recover an overpayment of medical

assistance based upon his failure to report on his application that his former wife was part of his household.

There is a second potential basis for recovering at least a portion of the alleged overpayment. Medical assistance rules require BadgerCare Plus recipients to report if their income increases to the federal poverty level within 10 days of when the change occurred. Wis. Admin. Code, § DHS § 104.02(6); *BadgerCare Plus Handbook*, § 27.3. The federal poverty level for a single person was \$980.83 per month last year. *BadgerCare Plus Handbook*, § 50.1. The petitioner began earning this in December 2014, so he should have reported the employment by January 10, 2015. *Exhibit 4*. This would have affected his benefits beginning February 1, 2015. The statement the Department submitted from the tribe indicated that he was still employed on the date of the statement, July 27, 2016. *Exhibit 5*. But the Department provided evidence of his wages only for the period running from November 20, 2014, through March 26, 2015. Because there is no evidence of wages he earned after March 2015, there is no evidence that those wages exceeded the federal poverty level after then. Because it cannot recover an overpayment without providing proof that his income exceeded the program's limit, the only benefits it can potentially recover from him are those he received in February and March 2016.

His income was over \$1,700 in each of those months, which is well over the federal poverty level. But that only establishes that he was ineligible during those months; it does not establish what the Department may recover from him. To do this, it must establish the cost of the benefits, including capitation fees and payment of medical bills, provided to him during those months. There is no way to determine this because the Department did not provide a worksheet or any other documentation that broke the alleged overpayment down in any manner.

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). The court in *Hanson* stated that the policy behind this principle is to assign the burden to the party seeking to change a present state of affairs. By seeking to recover the petitioner's benefits, the agency is the moving party. The Department acknowledged the principle laid down in *Hanson* in *Final Decision ATI-40/87198* where Deputy Secretary [REDACTED] ruled on August 17, 1995, that in any fair hearing concerning the propriety of an agency action, the county or state agency has the burden of proof to establish that the action it took was proper given the facts of the case.

Sometimes when an agency provides inadequate evidence, it still presents enough evidence to determine a range in which the overpayment might fall. In these instances, the Division of Hearings and Appeals may allow an overpayment that falls at the bottom of the possible range because that is what the Department has proved. In this matter the Department presented nothing except an unsubstantiated claim of the total amount of the overpayment: The record lacks a single piece of documentation showing what medical bills and capitation fees the program paid on the petitioner's behalf, and it never broke the total amount of its claim into monthly amounts, I have no way to determine that the overpayment was any particular amount or falls in some particular range in February and March 2015. Therefore, the agency is not entitled to recover any overpayment against the petitioner.

I note that this is not the first time the department or one of its agents has failed to present evidence to support its overpayment. See, e.g., *DHA Decision Nos. FOP/166144 and MOP/157184* for recent examples.

### **CONCLUSIONS OF LAW**

1. The petitioner's former wife was not part of his BadgerCare Plus assistance group from May 2014 through April 2015 because they filed separate federal income tax returns and neither is listed as a dependent on the other's return.

2. The petitioner was ineligible for BadgerCare Plus during February and March 2015 because his assistance group's income exceeded the federal poverty level.
3. Other than during February and March 2015, the petitioner was eligible for the program during the remaining months between May 2014 and April 2015 because his assistance group's reportable income was below the federal poverty level.
4. The department is not entitled to recover any overpayment of medical assistance the petitioner received in February and March 2015 because it did not submit any evidence concerning the amount of that overpayment.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the Public Assistance Collections Unit with instructions that within 10 days of the date of this decision it take all steps necessary to remove from its records any finding that the petitioner received more medical assistance than he was entitled to from May 1, 2014, through April 30, 2015. The Unit shall also end all attempts to recover any medical assistance benefits provided on the petitioner's behalf during this period.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

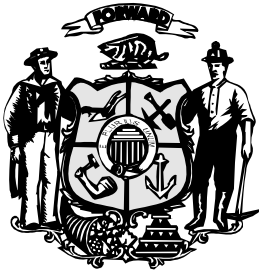
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 24th day of February, 2016

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\sMichael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on February 24, 2016.

Public Assistance Collection Unit  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability